

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ROGER DIXON, # 253258,)
Petitioner,)
v.) Civil Action No.
MARY COOKS, *et al.*,) 2:18-CV-1045-WHA
Respondents.) [WO]

RECOMMENDATION OF THE MAGISTRATE JUDGE

This case is before the court on a petition for writ of habeas corpus under 28 U.S.C. § 2254 filed through counsel by Roger Dixon (“Dixon”), a state inmate incarcerated at the Fountain Correctional Facility in Atmore, Alabama. Doc. # 1. Dixon challenges his 2015 conviction in the Circuit Court of Escambia County on the charge of domestic violence, in violation of § 13A-16-138(b), Ala. Code 1975. He was sentenced to 20 years in prison.

DISCUSSION

Title 28 U.S.C. § 2241(d) provides:

Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application.

28 U.S.C. § 2241(d). By statute, then, petitions for writ of habeas corpus brought under § 2254 must be filed either in the federal district court for the district of the state court of conviction or the federal district court in the district of incarceration in that state.

Dixon was convicted and sentenced in the Circuit Court of Escambia County, and he is incarcerated at the Fountain Correctional Facility in Atmore, which is also in Escambia County. Escambia County is located within the federal judicial district of the United States District Court for the Southern District of Alabama. Consequently, this court, which sits in the Middle District of Alabama, does not have jurisdiction to entertain Dixon's § 2254 petition.

Under 28 U.S.C. § 1631, a court that finds it lacks jurisdiction to entertain a civil action may, if it is in the interest of justice, transfer such action to any other court in which the action could have been brought when it was filed. This court finds it would be in the interest of justice to transfer this case to the United States District Court for the Southern District of Alabama under § 1631.

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be TRANSFERRED to the United States District Court for the Southern District of Alabama under 28 U.S.C. § 1631.

It is further

ORDERED that the parties shall file any objections to this Recommendation on or before January 2, 2019. A party must specifically identify the factual findings and legal conclusions in the Recommendation to which objection is made; frivolous, conclusive, or

general objections will not be considered. Failure to file written objections to the Magistrate Judge's findings and recommendations in accordance with the provisions of 28 U.S.C. § 636(b)(1) shall bar a party from a *de novo* determination by the District Court of legal and factual issues covered in the Recommendation and waives the right of the party to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); 11th Cir. R. 3-1. *See Stein v. Lanning Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

DONE this 18th day of December, 2018.

/s/ Charles S. Coody
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE